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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1929

No. 417

THOMAS A. BALDWIN, THOMAS A. BALDWIN, EXECUTOR OF THE WILL OF CARRIE POOL BALDWIN, ET AL., ETC., PLAINTIFFS IN ERROR AND APPELLANTS,

vs.

STATE OF MISSOURI

IN ERROR TO AND APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSOURI

FILED SEPTEMBER 24, 1929

(34,548)

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[Vol. 1] [Caption omitted]

[fol. 2]

IN CIRCUIT COURT OF LEWIS COUNTY

In Vacation—June 1, 1927

No. 12321

In the Matter of the Estate of CARRIE POOL BALDWIN, Deceased

MINUTE ENTRY

Now at this day comes Jesse L. Brightwell, Judge and Clerk of the Probate Court and files transcript of proceedings of his court with clerk of the circuit court an appeal having been granted to the circuit court in the above entitled cause.

IN CIRCUIT COURT OF LEWIS COUNTY

In the Matter of the Estate of CARRIE POOL BALDWIN, Deceased

JUDGMENT—Sept. 5, 1927

Now at this day some the parties hereto, the State of Missouri, by W. M. Hilbert, Prosecuting Attorney of Lewis County, Missouri, and comes appellant Thomas A. Baldwin, by his attorney of record herein, and comes Harry Carstarphen, administrator in said estate with will annexed, in person and by attorney, and the cause having heretofore been submitted to the court upon the pleadings and evidence in the cause and by the court taken under advisement, the court doth find that the deceased, Carrie Pool Baldwin, was at the time of her demise a non-resident of the State of Missouri; that the decedent at the time of her death owned land in the State of Missouri to the clear market value of [fol. 3] $55,380.00, and the court finds that under the laws of the State of Missouri said real estate so situated in this state is subject to the inheritance tax of the State of Mis-

souri at the rate provided by law and at the clear market value aforesaid, reduced by the lawful deductions hereinafter mentioned; the court further finds that decedent left no other tangible property in the state of Missouri; the court further finds that the intangible personal property consisting of deposits in banks in the state of Missouri and of promissory notes and bonds, under the law in such cases made and provided, are not subject to inheritance tax of the state of Missouri; the court further finds that the authorized lawful deductions are $19,919.29; the court further finds that the only heir and devisee of said Carrie Pool Baldwin is Thomas A. Baldwin, one of the appellants herein; the court further finds that the duly appointed, acting and qualified appraiser, Wm. R. Risk, was actually engaged five days in making the appraisement.

Now therefore it is ordered, adjudged and decreed that that portion of the report of Wm. R. Risk, the appraiser, and judgment of approval in the probate court of Lewis County, Missouri, which assesses or attempt to assess inheritance tax against the intangible personal property in said report and in said judgment, found to be of the clear market value of $85,898.09 be set aside and for naught held and that the assessment of said taxes is by the court declared to be without authority and void of no effect.

It is ordered and adjudged that the clear market value of the property, estate or interest referred to herein and in said appraiser's report, the transfer of which is subject to the tax imposed by law in such cases made and provided, the amount of said tax and the party liable therefor is as follows:

Name and address of Beneficiary: Thomas A. Baldwin, Quincy, Illinois; relationship: Son; real estate ($55,380.00 less $19,919.29); $36,460.71; legal exemption: $5,000.00; subject to tax: $30,460.71.

[fol. 4] Subject to tax	Rate	Amount of tax
$20,000.00	1%	$200.00
10,460.71	2%	209.22
		$409.22

It is further ordered and adjudged that said appraiser be allowed the sum of $25.00 for making said appraisement

and that said sum of $25.00 with $10.50 probate fees is taxed as costs against the person liable for said tax and as a lien against the interests of said person.

It is further ordered that said Harry Carstarphen, Administrator of said estate with will annexed, before making his final settlement, pay to the said appraiser the sum of $25.00 and said probate fees of $10.50; also pay to the treasurer of the State of Missouri, when due, the aforesaid tax, so assessed; Provided, there is sufficient money in his hands belonging to said Thomas A. Baldwin so taxed, or that may have been advanced by him to said Thomas A. Baldwin, with which to pay said tax and of said costs, and if said administrator have not such amount on hand then he be ordered to pay the same out of the proceeds of the sale of any property that may hereafter be ordered sold by this court to raise funds to make such payment. And it is ordered that this judgment and a copy hereof and the proceedings hereof in this court be certified to the probate court of Lewis county, Missouri, in the manner provided by law (particularly Section 291 R. S. 1919) and said probate court shall proceed and be governed accordingly.

[fols. 5 & 6] IN CIRCUIT COURT OF LEWIS COUNTY

[Titles omitted]

MINUTE ENTRIES

Sept. 7, 1927.

Now at this day comes the state of Missouri by Walter M. Hilbert, prosecuting attorney of Lewis County and files motion for new trial in the above entitled cause.

Now at this day motion for new trial is by the court overruled.

State by Prosecuting Attorney files application and affidavit for appeal and an appeal is by the court granted to the Supreme Court of Missouri. Leave to appellant to file bill of exceptions before or during next term of this court.

Clerk's certificate to foregoing papers omitted in printing.

[fol. 7] IN SUPREME COURT OF MISSOURI, en Banc, October Term, 1928

No. —

STATE OF MISSOURI, Appellant,

vs.

ESTATE OF CARRIE POOL BALDWIN, Deceased, Respondent

Appeal from the Circuit Court of Lewis County, State of Missouri, Honorable James A. Cooley, Judge

Appellant's Abstract of the Record—Filed May 7, 1929

APPELLANT'S PETITION

This case arises out of a proceeding in the probate court of Lewis County, Missouri, to assess inheritance taxes in the estate of Carrie Pool Baldwin, a resident of the State of Illinois at the time of her death.

After due notice had been given by the appraiser in this estate, who was appointed by the probate judge of Lewis [fol. 8] County, Missouri, wherein the property of the above named decedent, sought to be taxed, was located, said appraiser fixed the value on said property and appraised it on December the 16th, 1926. Exceptions to the appraiser's report were filed by Harry Carstarphen, administrator with will annexed. The probate court having made an order overruling such exceptions and approving the appraiser's report, the case was appealed by said administrator to the circuit court of Lewis County. The case was there tried and submitted on the basis of said exceptions filed in the probate court, which said exceptions (omitting caption) are in words and figures as follows:

"Now comes Harry Carstarphen, Administrator of the Estate of Carrie Pool Baldwin, deceased, with will annexed and comes also Thomas A. Baldwin, the sole devisee and legatee under the will of Carrie Pool Baldwin, deceased, he being also the sole and only heir of the said Carrie Pool Baldwin, deceased, and file this their exceptions to the report of the appraiser by the Probate Court appointed for the purpose of assessing inheritance tax in said estate.

"And your exceptor excepts to the report of the appraiser, Wm. R. Risk, filed in this court in the particulars herein specified:

[fol. 9] "To the appraisal and finding as to taxes on the items under description of property:

Bonds;

Cash in Bank;

All other personal property as enumerated in items 1 to 29, inclusive, to-wit:

Cash

1. Cash on deposit, Southeast Mo. Trust Co., Cape Girardeau, Mo.	$15,937.51
Cash on deposit, Advance Exchange Bank, Advance, Missouri	1,078.24

Bonds

27. $1,000 Reg. 4th Liberty Loan Bond, No. 20841, 4¼%	
28. $1,000 Reg. 4th Liberty Loan Bond, No. 20840, 4¼%	2,000.00

Promissory Notes

2. Note $4,100, 5/15/19, 7%; Due 5 yrs. Interest $349.39, Arthur A. Abernathy and Mayne W. Abernathy	4,449.39
3. Note $1,400-$900, Bal. $500, 8/21/20, 6%, Due 5 yrs. Interest $70.23, Edgar L. and Anita Crader	570.23
[fol. 10]	
4. Note $3,000, 5/15/19, 6%, Due 5 yrs. Interest $1,018.69, Thos, and Nola Huskey	3,000.00
5. Note $5,000, 3/26/21, 8%, Due 1 yr. Interest $688, E. B., Wm. and J. H. Jenkins	5,421.00
6. Note $2,621.60, 12/22/21, 6%, Due 5 yrs. Interest $628.31, Frank, Monral, Ira and Mattie Dunning	1,150.00
7. Note $1,000, 1/5/23, 6%, Due 5 yrs. Interest $116.80, John F. and Manda Cunningham	1,000.00

8. Note $5,500, 4/9/19, 7%, Due 5 yrs. Interest $625.31, J. W., L. R., Dollie and M. J. Robinson 6,125.00
9. Note $6,000, 3/24/21, 8%, Due 5 yrs. Interest $825.60, Thomas J. Cox 6,825.60
10. Note $5,000, 3/24/21, 8%, Due 5 yrs. Interest $688.00, Frank O. Cox 5,688.00

[fol. 11]

11. Note $4,000, 8/19/24, 8%, Due 5 yrs. Interest $407.42, Marion Leonard and Edna Cox 4,407.42
12. Note $1,500, 1/5/23, 6%, Due 5 yrs. Interest $185.40, Elijah and McCarthor Smith 1,500.00
13. Note $2,792.80-$440, Bal. $2,352.80, 11/16/21, 6%, Due 5 yrs. Interest $533.48, John F. and Lille E. Smtih 2,352.80
14. Note $1,700, 11/9/18, 6%, Due 5 yrs. Interest $102.00, C. O. Wiggins and Elizabeth Wiggins 1,802.00
15. Note $690, 10/21/25, 6%, Due 5 yrs. Interest $41.40, Jeff D. and Mary Riley 731.40
    Note $1,000, 10/21/25, 6%, Due 5 yrs. Interest $60.00, Jeff D. and Mary Riley 1,060.00
16. Note $1,000-$500, Bal. $500, 4/11/16, 6%, Due 5 yrs. Interest $30.00 payable to J. H. and G. A. Richardson, by C. O., Elizabeth and J. A. Wiggins 530.00

[fol. 12]

    Note $1,000, 4/11/16, 6%, Due 4 yrs. Interest $262.48. Payable and signed as above 1,060.00
17. Note $3,000, 1/5/18, 8½%, Due 7 yrs. Interest $456. Payable to E. D. Hoffman, by Saml. B. and Martha I. Bedwell 3,000.00
    Note $195, 1/5/18, 8%, Due 7 yrs. Interest $29.65 (Pd.). Payable and signed as above.
18. Note $1,500, 3/12/19, 6%, Due 2 yrs. Interest $160.21, Payable to S. G. Bedwell by J. J. and Mary E. Wilkinson 1,660.00
19. Note $1,300, 3/1/25, 6%, Due 5 yrs. Interest $137.17, J. J. Wilkinson 1,437.00

20. Note $300-$47.50, Bal. $252.50, 2/27/25, 8%, Due 1 yr. Interest $16.59, J. J. Wilkinson and Mary E. Wilkinson	252.50
21. Note $2,500, 2/1/18, 6%, Due 2 yrs. Interest $125, M. E. Leming Lumber Co., by M. E. Leming	2,625.00
[fol. 13]	
Note $2,500, 2/1/18, 6%, Due 4 yrs. Interest $125, M. E. Leming Lumber Company, by M. E. Leming	2,625.00
Note $2,500, 2/1/18, 6%, Due 5 yrs. Interest $125, M. E. Leming Lumber Co., by M. E. Leming	2,625.00
22. Note $1,000-$400, Bal $600, 1/12/23, 6%, Due 5 yrs. Interest $36, Mr. E. Leming Lumber Co	636.00
23. Note $2,000-$800, Bal. $1,200, 1/12/23, 6%, Due 5 yrs. Interest $72, M. E. Leming Lumber Co	1,272.00
24. Note $2,000-$400, Bal. $1600, 1/12/23, 6%, Due 5 yrs. Interest $96, M. E. Leming Lumber Co	1,696.00
25. Note $1,500-$400, Bal. $1100, 12/28/22, 6%, Due 5 yrs. Interest $66, M. E. Leming Lumber Co., by M. E. Leming	1,166.50
26. 3 Notes $50-$50-$25, 1/28/26, Due 6-9-12/1/26, Interest $3.00, B. H. Ramsey	125.00
[fol. 14]	
29. Note $90, 1/1/26, 8%, Due 11/30/26, Interest $6.60, John Dunning, Mr. & Mrs. F. B. Dunning and C. H. Schuehuff	90.00

"Your exceptor avers and shows that Carrie Pool Baldwin, deceased, was a non-resident of the State of Missouri at the time of her death; that she passed away in the State of Illinois; that said items hereinabove set out are intangible personal assets owned by a non-resident and the Situs of the property was in the State of Illinois at the time of the demise of said Carrie Pool Baldwin, deceased, and has so remained; that the State of Missouri has no jurisdiction over said personal property for the purpose of imposing inheritance taxes; that the action of appraiser in apprais-

ing said property and submitting for inheritance tax assesment thereon is void and of no effect;

"That Item No. 1 herein set out represents money on deposit in Missouri banks of a non-resident; that it is money owed to a non-resident and that it is a debt, the situs of which is with the creditor;

"That items Nos. 2, 3, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, [fol. 15] 18, 19, 22, 24, and 25, are notes secured by real estate situate in Bollinger and Stoddard Counties, and payable to Carrie Pool Baldwin, deceased, a non-resident of the State of Missouri;

"That items Nos. 4 and 7 are notes secured by land situate in Bollinger County, payable by non-residents to a non-resident of the State of Missouri;

"That items Nos. 5, 20, 21, 26 and 29, are unsecured notes payable to a non-resident of the State of Missouri; and

"That items 27 and 28 are government bonds owned by a non-resident of the State of Missouri.

"Your exceptor further states that said appraiser and said Probate Court are without any authority, power and jurisdiction in the premises as aforesaid, for the reason that the legislative enactment of the State of Missouri providing for inheritance tax, in pursuance of which the said appraiser and said Probate Court proceeded in the premises does not and cannot include intangible personal property of a non-resident of the State of Missouri, and evidenced by notes and other instruments found in the State of Missouri, or if said act is construed to include and undertakes to assess and collect inheritance taxes on trans- [fol. 16] fer of property from one non-resident of the State of Missouri to another non-resident of the State of Missouri, which said property is intangible, then said act is unconstitutional, void and of no effect.

"1. Section 1 of the 14th Amendment of the Constitution of the United States, in that said act then (1) deprives the transferee and other persons of property without due process of law; and (2) denies to transferee and other persons the equal protection of law; (3) effort of one state to undertake to abridge the privileges and immunities of citizens of the United States.

"2. Section 2, Article 4 of the Constitution of the United States, in that said act is in violation of act guaranteeing the citizens of each state all privileges and immunities of citizens in the several states.

"3. Section 30, Article 2, of the Constitution of Missouri, provides that no person shall be deprived of property without due process of law.

"Wherefore your exceptor prays the Court to sustain the foregoing exceptions and to eliminate in his order all consideration and assessment of taxes against said intangible [fol. 17] personal property herein specified and enumerated.

(Signed) Harry Carstarphen, Administrator of the Estate of Carrie Pool Baldwin, Deceased, with will annexed, and Thomas A. Baldwin, by John F. Garner Attorney."

Filed May 23, 1927. Jesse L. Brightwell, Judge and Clerk of Probate Court.

RECORD ENTRIES

May 23, 1927.—Report of duly appointed appraiser. After due notice had been given, appraisal was made in the estate of Carrie Pool Baldwin.

May 23, 1927.—Motion was filed by the executor of Carrie Pool Baldwin asking that the court order the administrator to turn over to him all personal intangible property in the estate of decedent; motion overruled.

May 24, 1927.—Report of appraiser approved by the probate court and inheritance tax assessed. Exceptions to report filed by administrator and by the sole devisee and legatee; exceptions overruled.

May 24, 1927.—Appeal to circuit court of Lewis County taken by the administrator of the estate of Carrie Pool Baldwin.

[fol. 18] June 1, 1927.—Appeal to the circuit court allowed.

June 1, 1927.—The clerk of the probate court of Lewis County certified to the circuit court of said county a true, full and complete transcript of the record and proceedings

had in said probate court in the matter of the assessment of transfer and inheritance tax in the estate of Carrie Pool Baldwin.

March Term, 1927.—Case submitted to the circuit court.

September 5, 1927.—Judgment entered by the circuit court setting aside that part of the appraiser's report which assessed inheritance tax against the intangible personal property of Carrie Pool Baldwin.

September 7, 1927.—Motion for new trial was filed by the State of Missouri; overruled.

September 7, 1927.—Appeal filed by the State of Missouri to the Supreme Court of Missouri; appeal granted.

April 24, 1928.—Appellant's bill of exceptions allowed, signed, sealed, filed and ordered made a part of the record.

[fol. 19] **Bill of Exceptions**

CAPTION

Be it remembered, That heretofore, to-wit, on the 20th day of June, 1927, the same being one of the days of the March Adjourned Term, 1927, of the Circuit Court of Lewis County, Missouri, the above entitled cause came on for hearing before the Honorable James A. Cooley, Judge of said Court, upon the pleadings heretofore filed herein, and the issued joined.

Whereupon the following proceedings were had and testimony taken, to-wit:

Appearances: Walter M. Hilbert, Prosecuting Attorney of Lewis County, Mo., appearing for the State; John F. Garner, Esq., and Harry Carstarphen, Esq., appearing for the Estate.

Appellant's Evidence

Appellant (Administrator with will annexed in the estate of Carrie Pool Baldwin was appellant from the probate court to the circuit court), to sustain the issues on his part, offered and introduced evidence as follows, to-wit:

OFFERS IN EVIDENCE

Appellant offered in evidence the transcript which was brought up from the probate court. Included in said tran-
[fol. 20] script was the report of the appraiser, which said report is as follows:

"In the Probate Court of Lewis County, Missouri

No. —

"In the Matter of the Appraisal of the Estate of Carrie Pool Baldwin, Deceased

Under an Act Providing for a Tax on Transfers by Gift, Inheritance, etc.

"Above named decedent, a legal resident of Quincy, County of Adams, State of Illinois, died testate October 4th, 1926, at Quincy, Illinois, Foreign Letters of Administration with will annexed were issued on the estate of said decedent October 22nd, 1926, to Harry Carstarphen of Fisher Building, Hannibal, Missouri.

"Report of Appraiser

"To the Hon. Jesse L. Brightwell, Probate Judge:

"The undersigned, having been on the 2nd day of December, 1926, by order of the Judge of this Court, duly appointed appraiser, directed to fix and determine the valuation of the property of the above named decedent, at its clear market value at the time of decedent's death, in pur-
[fol. 21] suance of an Act Providing for a Tax on Transfers of Property by Gift, Inheritance, etc., Approved April 12, 1917, Laws of Missouri, 1917, page 114, respectfully reports:

"That pursuant to said act he duly took and subscribed the oath prescribed thereby and filed the same as therein provided.

"That he did on the 16th day of December, at 10 o'clock A. M., at Courthouse in Monticello, Missouri, proceed to fix such valuation, first having given at least ten days' notice to this Court by notice filed herein, and notice by mail, postage prepaid, to all interested persons whose address he had or could obtain, including C. Eugene Stephens, the Treasurer of the State of Missouri, and Barker Davis, the Prosecuting Attorney of Lewis County, Missouri, of the time and the place where such valuation would be fixed.

"That at said time and place the following persons, in interest, were in attendance, to-wit: Thos. A. Baldwin, John T. Garner and Harry Carstarphen.

"That at said time and place and at other and subsequent times and divers places to which these proceedings were regularly adjourned, he did appraise at the clear market value as of the date of decedent's death all property of which the said decedent died possessed, as follows:

[fol. 22] Deductions

Appraiser should list proper deductions under following heads: 1, Lawful Debts; 2, Real Estate Mortgages; 3, Taxes; 4, Expenses of Administration.

Debt or claim of	Nature of claim	Amount
Elmer Osborne	Allowed claim	$90.00
Collector of Lewis Co	Taxes for 1926	91.10
Collector of Lewis Co	Taxes for 1927 estimated	91.10
Collector of Bollinger Co	Taxes for 1926	6,404.10
Collector of Bollinger Co	Taxes for 1927 estimated	6,404.10
Collector of Stoddard Co	Taxes for 1926	67.62
Collector of Stoddard Co	Taxes for 1927 estimated	67.62
Cost of Administration		6,702.65
Total		$10,919.29

Recapitulation

Gross market value of estate:

Cash	$17,015.75
Bonds and mortgages	2,000.00
Stocks and other securities	None
Notes, claims and open accounts	66,882.34
Insurance policies and benefit certificates	None
Household effects and other chattels	None
Real estate	55,380.00
Total	$141,278.09

Deductions:

Amount of all known lawful debts, except real estate mortgages	90.00
Real estate mortgages	None
General and special State, County and Municipal taxes due or to become due	13,125.64
All necessary expenses of administration	6,703.65
Total	$19,919.29
Clear net market value of estate	$121,358.80

Which said clear, net estate is subject to distribution as follows:

[fol. 23]

Name and address of beneficiary	Relationship	Value of interest of each in property transferred: Real estate	Value of interest of each in property transferred: Personal property	Annuities, life estates and terms of years	Total value interest of each	Amount legal exemption of each	Value of Interest or property of each subject to tax	Rate	Amount of tax
Thos. A. Baldwin, Quincy, Illinois.....	Son	$55,380.00	$65,978.80	None	$121,358.80	$5,000.00	$116,358.80	...	.....
							20,000.00	1%	$200.00
							20,000.00	2%	400.00
							40,000.00	3%	1,200.00
							36,358.80	4%	1,454.35
									$3,254.35

"All of which is respectfully submitted, in duplicate, this 23 day of May, 1927.

(Signed) Wm. R. Risk, Appraiser.

[fol. 24] "I hereby certify that the foregoing is a duplicate of the report filed in this cause on the 23 day of May, 1927, by Wm. R. Risk, duly appointed appraiser herein, at the time and for the purposes in said report set out.

"Witness my hand and seal this 23 day of May, 1927.

(Signed) Jesse L. Brightwell, Judge or Clerk Probate Court, Lewis County, Missouri."

Appellant next offered in evidence a motion filed in the Probate Court; said motion which was filed and overruled by the Circuit Court is as follows:

"STATE OF MISSOURI,
County of Lewis, ss:

IN THE CIRCUIT COURT OF LEWIS COUNTY, MISSOURI, MARCH TERM, 1927

"In the Matter of the Estate of CARRIE POOL BALDWIN, Deceased, HARRY CARSTARPHEN, Administrator, with Will Annexed

"Now comes Thomas A. Baldwin, the duly qualified and acting executor of the will of Carrie Pool Baldwin, deceased, in the State of Illinois, and Thomas A. Baldwin, as the only heir and devisee of Carrie Pool Baldwin, deceased, and moves the court to make an order and finding of record herein directing Harry Carstarphen, administrator with will annexed in the estate of Carrie Pool Baldwin, deceased, to turn over to the executor of the will of Carrie Pool Baldwin, deceased, all intangible personal property in his hands situated, which embraces items Nos. 1 to 29, inclusive, as described in inventory and appraisement of said administrator with will annexed, filed in Probate Court on the 16th day of December, 1926, for the reason that said adminis- [fol. 25] trator, through color of his office created by this court, holds said property and has inventoried same contrary to the law, and assigns as reasons therefor:

"That all of said personal property identified and enumerated in said inventory and appraisement is personal property and was at the time said administrator took it intangible personal property owned by a non-resident of the State of Missouri, to-wit: Carrie Pool Baldwin, deceased,

whose residence controls the situs of the property, and such evidence of indebtedness as may be in the hands of the administrator should be forthwith turned over to the executor of the will of Carrie Pool Baldwin, deceased, in the State of Illinois, the residence of said Carrie Pool Baldwin, deceased.

(Signed) Thomas A. Baldwin. Thomas A. Baldwin, Executor, by John F. Garner, Attorney."

Appellant next offered in evidence the last will and testament of Carrie Pool Baldwin, which reads as follows:

"I, Carrie Pool Baldwin, being of sound and disposing mind and memory and yet mindful of the uncertainty of life, [fol. 26] do hereby make the following as and for my last will and testament, hereby revoking all former wills by me heretofore executed.

"First. I direct that my funeral expenses and all just debts be fully paid.

"Second. All the rest, residue and remainder of my estate, whether real, personal or mixed, and whether owned by me now or acquired by me hereafter. I hereby give, devise and bequeath to my son Thomas A. Baldwin, absolutely and forever.

"Third. I hereby appoint my said son Thomas A. Baldwin executor of this my last will and testament, and request that he be not required to give any security on his bond as such executor.

"In witness whereof, I have hereunto set my hand and seal this second day of August, A. D. 1926.

Carrie Pool Baldwin. (Seal.)"

"I might suggest this point: That as to the real estate, there is no contention. This appeal, in order to carry any of it, had to carry it all, because it is all made in one order; the Court deeming his authority not such as he could divide it—that is, the Probate Court—and make two separate orders as to the real estate and personal property."

Whereupon appellant rested in chief.

[fol. 27] (Note.—The Judgment of the Circuit Court of Lewis County is shown on page 2 of the transcript.)

STATE'S MOTION FOR NEW TRIAL

"And thereafter, to-wit, on the 7th day of September, 1927, and within four days of the redition of the finding and judgment in this cause, and at the same term said finding and judgment were rendered, the State, by its counsel, filed its Motion for a New Trial in said cause. Said Motion for a new trial filed by the State as aforesaid, is herewith copied, made a part hereof, and is in words and figures as follows:

[fol. 28] IN THE CIRCUIT COURT OF LEWIS COUNTY, MISSOURI

"In the Matter of the Estate of CARRIE POOL BALDWIN, Deceased, Harry Carstarphen, Administrator with Will Annexed

"Motion for New Trial

"Now this day comes the Plaintiff, State of Missouri, by Walter M. Hilbert, Prosecuting Attorney of Lewis County, Missouri, and moves the Court to set aside the verdict and judgment rendered in the above entitled cause on the 5th day of September, 1927, and to grant it a new trial therein for the following reasons:

"1. That upon the record said judgment is erroneous.

"2. That the judgment was for the wrong party.

"3. Because the judgment in said cause is against the evidence, against the weight of the evidence, and against the law under the evidence.

"4. Because the Court erred in rendering judgment in said cause for the defendant.

(Signed) Walter M. Hilbert, Prosecuting Attorney for Lewis County, Missouri."

[fol. 29] Motion for New Trial Overruled, Affidavit for Appeal Filed, and Appeal Granted

"Motion for a New Trial Overruled

"And thereafter, to-wit, on the 7th day of September, 1927, the Court having duly seen, heard and considered

said Motion for a New Trial filed by the State as aforesaid, doth overrule the same.

"And to the action of the Court in overruling said Motion for a New Trial, the State, by its counsel, at the time excepted and saved its exceptions.

"Application and Affidavit for an Appeal

"And thereafter, and on the same day, to-wit, the 7th day of September, the State, by its counsel, filed in said court in said cause its application and affidavit for an appeal.

"Said Application and Affidavit for an Appeal, filed by the State as aforesaid, is as follows, to-wit:

[fol. 30] IN THE CIRCUIT COURT OF LEWIS COUNTY, MISSOURI

"STATE OF MISSOURI,
County of Lewis, ss:

"In the Matter of the Estate of CARRIE POOL BALDWIN, Deceased, HARRY CARSTARPHEN, Administrator with Will Annexed

Affidavit for Appeal

"Walter M. Hilbert, Prosecuting Attorney of Lewis County, Missouri, being duly sworn, says that the appeal from the order of the Circuit Court of Lewis County, Missouri, denying the assessing of the Transfer Tax or Inheritance Tax in the above.

"Appeal Granted

"And the Court having duly seen, heard and considered said Application and Affidavit for an Appeal, filed by the State as aforesaid, doth grant it an appeal as prayed for to the Supreme Court of the State of Missouri, at Jefferson City, and doth grant the State leave to file its Bill of Exceptions taken and saved in this cause before or during the next term of this Court.

[fol. 31] ORDER SETTLING BILL OF EXCEPTIONS

"Certificate

"And now, within the time allowed by law for filing Bill of Exceptions in this cause, comes the State, by its counsel, and presents this, its Bill of Exceptions taken and saved in this cause, and prays that the Court sign, seal, allow, settle and order the same to be filed and made a part of the record in this cause.

"Which is accordingly done this 24th day of April, 1928.
James A. Cooley, Judge of the Circuit Court of Lewis County, Missouri."

Transcript Filed

On the — day of ——, 1928, appellant (the State of Missouri), caused to be filed in this court a certified copy of the judgment of the court below showing the term and date on which the same was rendered, together with a certified copy of the order allowing the appeal with a like showing with reference hereto.

[fol. 32] IN SUPREME COURT OF MISSOURI

Respondent's Additional Abstract of Record—Filed April 11, 1929

PROBATE COURT OF LEWIS COUNTY, MISSOURI, OCTOBER 22ND, 1926

(Book 32, Page 96)

In the Matter of the Estate of CARRIE POOL BALDWIN, Deceased

MINUTE ENTRIES

A certified copy of the will of Carrie Pool Baldwin proved and admitted to probate in Adams County, Illinois, duly filed and admitted to probate in Lewis County, and ordered to be recorded.

On application Harry Carstarphen is appointed administrator with will annexed—and ancillary letters of administration granted to said Harry Carstarphen.

And thereupon he tendered bond as such administrator with will annexed—which said bond is by the court examined, approved and ordered filed and recorded, and letters of administration with will annexed are ordered granted and issued to him.

On this day there is filed herein and offered for record an instrument of writing purporting to be the duly authenticated copy of the last will and testament of Carrie Pool Baldwin, deceased, late of the County of Adams, and State of Illinois, as proved and admitted to probate in said county and state, and the court, having examined same and the proofs and certificates hereto attached, finds that the same was executed and proved according to the laws of this state and now admits the same to record herein in the same manner as wills executed and proved in this state.

[fol. 33] PROBATE COURT LEWIS COUNTY, MISSOURI, JUNE 1st, 1927

(Book 32, Page 184)

In the Matter of the Estate of CARRIE POOL BALDWIN, Deceased

ORDER ALLOWING APPEAL

Now comes Harry Carstarphen, administrator with will annexed of the estate of Carrie Pool Baldwin, deceased, and Thomas A. Baldwin, sole devisee and legatee under the will, and the only heir of Carrie Pool Baldwin, deceased, and file herein their affidavit and pray to be permitted to appeal to the Circuit Court of Lewis County, Missouri, from the judgment of this court of the 23rd day of May, 1927, finding and assessing transfer and inheritance tax, and file herein their appeal bond in the sum of $7000.00, with the Fidelity & Casualty Company of New York as surety thereon, which bond is by the court approved and ordered that such appeal be allowed to said circuit court and that the clerk hereof make and certify to said circuit court a copy of the records herein pertaining

to said cause, and attach thereto the original papers in this case.

(Order follows: Penalty and interest waived until cause is finally determined.)

CIRCUIT COURT RECORDS OF LEWIS COUNTY, MISSOURI

(Book 30, Page 88)

No. 12321

In the Matter of the Estate of CARRIE POOL BALDWIN, Deceased

John F. Garner noted as attorney for Thomas A. Baldwin as executor of the estate of Carrie Pool Baldwin in State of Illinois and for Thomas A. Baldwin.

Thomas A. Baldwin, executor, files motion to turn over to executor certain personal property, which motion is by the court overruled.

EXHIBIT A

STATE OF ILLINOIS,
Adams County, ss:

In the Matter of the Estate of CARRIE POOL BALDWIN, Deceased

The following is a full and perfect inventory of all the real and personal estate of said deceased, so far as the same [fol. 34] has come to the possession or knowledge of the undersigned Thomas A. Baldwin, executor of the last will and testament of Carrie Pool Baldwin, deceased.

The following is a full and perfect inventory of all the real and personal estate of said deceased, so far as the same has come to the possession of the undersigned within the State of Illinois.

Real Estate

(Here follows description of the real estate in the State of Illinois.)

Chattel Property

(Liberty bonds, old coins, jewelry, cash in Quincy-Ricker National Bank.)

The following is a full and perfect inventory of all real and personal estate of said deceased, so far as the same has come to the knowledge of the undersigned, and all being located in the State of Missouri, and in the possession of Harry Carstarphen, administrator with the will annexed in said estate within and for the State of Missouri:

Real Estate

(Description of real estate situated in the State of Missouri, as set out in Abstract of Record, pages 23 and 24.)

[fol. 35]

Chattel Property

Cash on deposit in Southeast Missouri Trust Company, at Cape Girardeau, Missouri	$15,937.51
Cash on deposit in Advance Bank, at Advance, Missouri	1,078.24
Two U. S. Liberty bonds of $1,000.00 each	2,000.00
Received cash from Abernathy loan	4,449.39

Notes and Accounts

	Date	
Edgar L. Crader and Amtar Pearl Crader	Aug. 21, 1920 6% Good	$500.00
Thomas Huskey, Jr. and Nora Huskey	May 15, 1919 6% Good	3,000.00
E. V. Jenkins, William Jenkins & J. H. Jenkins	Mar. 26, 1921 8% Doubtful	5,000.00
Frank Dunning, Monrold Dunning, Ina Dunning, Mattie Dunning	Dec. 22, 1921 6% Doubtful	1,150.00
John T. Cunningham & Amanda Cunningham	Jan. 5, 1923 6% Good	1,000.00
J. W. Robinson, L. R. Robinson, Dollie Robinson, M. J. Robinson	Apr. 9, 1919 7% Good	5,500.00
Thomas I. Cox	Mar. 24, 1921 8% Good	6,000.00
Frank D. Cox	Mar. 24, 1921 8% Good	5,000.00
Marion Leonard Cox & Edna Cox	Aug. 19, 1924 8% Good	4,000.00

Date	
[fol. 36] Elijah L. Smith, McArthur Smith Jan. 5, 1923 6% Good	1,500.00
John F. Smith & Lillie E. Smith Nov. 16, 1921 6% Good	2,352.80
C. O. Wiggins and Elizabeth Wiggins Nov. 9, 1918 6% Good	1,700.00
Jeff D. Riley & Mary Riley Oct. 21, 1925 6% Doubtful	690.00
Jeff D. Riley & Mary Riley Oct, 21, 1925 6% Doubtful	1,000.00
C. O. Wiggins, Elizabeth Wiggins, J. A. Wiggins, Apr. 11, 1916 6% Good	500.00
C. O. Wiggins, Elizabeth Wiggins, J. A. Wiggins Apr. 11, 1916 6% Good	1,000.00
Samuel B. Bedwell, Martha I. Bedwell Jan. 5, 1918 6½% Good	3,000.00
J. J. Wilkinson, Mary E. Wilkinson, Mar. 12, 1919 6% Doubtful	1,500.00
J. J. Wilkinson Mar. 1, 1920 6% Doubtful	1,300.00
J. J. Wilkinson & Mary Wilkinson Feb. 27, 1925 8% Doubtful	252.50
M. E. Leming Lbr. Co. Feb. 1, 1918 6% Good	2,500.00
M. E. Leming Lbr. Co. Feb. 1, 1918 6% Good	2,500.00
M. E. Leming Lbr. Co. Feb. 1, 1918 6% Good	2,500.00
M. E. Leming Lbr. Co. Jan. 12, 1923 6% Good	600.00
[fol. 37] M. E. Leming Lbr. Co. Jan. 12, 1923 6% Good	1,200.00
M. E. Leming Lbr. Co. Jan. 12, 1923 6% Good	1,600.00
M. E. Leming Lbr. Co. Dec. 28, 1922 6% Good	1,100.00
B. H. Ramsey Jan. 28, 1926 8% Desperate	50.00
B. H. Ramsey Jan. 28, 1926 8% Desperate	50.00
B. H. Ramsey Jan. 28, 1926 8% Desperate	25.00
John Dunning, Mr. and Mrs. F. B. Dunning and C. H. Schuehuff Jan. 1, 1926 8% doubtful	90.00

I do hereby certify that the above is a correct inventory of the real and personal estate of Carrie Pool Baldwin, deceased.

Given under my hand this 28th day of January, A. D. 1927.

Thomas A. Baldwin, Executor as Aforesaid.

ADAMS COUNTY,
State of Illinois:

No. —

In the Matter of the Estate of CARRIE POOL BALDWIN, Deceased

Transfer Tax

To the Honorable Charles G. Nauert County Judge of said County:

The undersigned Charles L. Bartlett, Appraiser in said matter, appointed by an order entered by Your Honor as [fol. 38] County Judge of said County on the 13th day of October, A. D. 1926, respectively reports:

First. (1) That on the 15th day of October, A. D. 1926 he gave notice by mail to all persons known to have or claim an interest in the property of said estate, including the Attorney General, and such persons as Your Honor directed, of the time when and the place where he would proceed to take the evidence and appraise such property, a certificate of service of which notice, or waiver of notice, is hereto attached and made a part of this report.

Second. That on the 20th day of October A. D. 1926 at the hour of ten o'clock A. M., and thereafter from time to time pursuant to adjournments regularly had, at Quincy in the County of Adams and State of Illinois, he proceeded to take the evidence and deposition of the several witnesses examined under oath concerning said estate and property, and to appraise the fair cash value thereof at the time of the death of the said decedent, which evidence and depositions are hereto attached and made a part of this report.

Third. That the following appearances were made before me in these proceedings, in person, by attorney or by guardian, as follows:
Thomas A. Baldwin, executor, by John F. Garner, his attorney.

Fourth. That all of said persons interested in said estate are of full age and not under any disability.

[fol. 39] Fifth. That the State was represented by Mr. Lee Capps, Inheritance tax attorney.

Sixth. That said Carrie Pool Baldwin died on the 4th day of October A. D. 1926, testate, a resident of Adams County and that on the 8th day of October A. D. 1926 letters testamentary were duly issued by the County of said Adams County, Illinois, to Thomas A. Baldwin as executor of her will.

Seventh. That he finds that the fair cash market value of said property at the time of death of decedent was as follows:

Real Estate

(Recital and appraisal of real estate situated in the State of Illinois. Total appraised value $30,675.00.)

Chattel Property

(Certain chattel property situated in the State of Illinois.)

Cash on deposit in Southeast Missouri Trust Company of Cape Girardeau, Mo	15,937.51
Cash on deposit in Advance Bank of Advance Mo.	1,078.24
Two U. S. Liberty loan bonds of $1000 each	2,000.00
Proceeds of Abernathy loan	4,449.39
Note of Edgar L. and Anita Crader, prin. $1,400, credit $900, balance $500, accrued int. $70.23, appraised value	570.23
[fol. 40]	
Note of Thomas and Nola Huskey, prin. $3,000, accrued int. $1018.69, app, v.	3,000.00
Note of E. B. Jenkins, Wm. Jenkins and J. H. Jenkins, prin, $5000, accrued int. $688, appraised value	5,421.00
Note of Frank Dunning, Monral Dunning, Ira Dunning and Mattie Dunning, prin. $2,621.60, accrued int. $628.31, appraised value	1,150.00
Note of John F. Cunningham and Manda Cunningham, prin. $1000, accrued int. $116.80, appraised value	1,000.00

Note of J. W. Robinson, L. R. Robinson, Dollie Robinson and M. J. Robinson, prin. $5500, accrued int. $625.31, appraised value	6,125.00
Note of Thomas J. Cox, prin. $6,000, accrued int. $825.60, appraised val	6,825.60
Note of Frank Cox, prin. $5,000, accrued int. $688, appraised value	5,688.00
Note of Marion Cox, Leonard Cox, and Edna Cox, prin. $4,000, accrued int. $407.42, appraised value	4,407.42
Note of Elijah and McArthur Smith, prin. $1,500, accrued int. $185.40	1,500.00
Note of John F. and Lillie E. Smith, prin $2,792.00, credit $440, balance $2,352.80, accrued int. $533.48, appraised value	2,352.80
[fol. 41]	
Note of C. O. and Elizabeth Wiggins, prin. $1700, accrued int. $102	1,802.00
Note of Jeff D. Riley and Mary Riley, prin. $690, accrued int. $41.40	731.40
Note of Jeff D. Riley and Mary Riley, prin. $1,000, accrued int. $60	1,060.00
Note of C. O. Wiggins, Elizabeth Wiggins and J. A. Wiggins, prin. $1,000, paid $500, accrued int. $30.00, appraised value	530.00
Note of C. O. Wiggins, Elizabeth Wiggins and J. A. Wiggins, prin. $1,000, accrued int. $262.48, appraised value	1,060.00
Notes of Samuel B. Bedwell and Martha I. Bedwell, one for $3,000, accrued int. $456, and one for $105, accrued int. $29.65, app. val.	3,000.00
Note of J. J. and Mary Wilkinson, prin. $1,500, accrued int. $160.21, a. v.	1,660.00
Note of J. J. Wilkinson, prin. $1,300, accrued int. $137.17, app. val.	1,437.00
Note of J. J. Wilkinson and Mary Wilkinson, prin. $252.50, accrued int. $16.59, appraised value	252.50
Note of Leming Lumber Co. prin. $2,500, accrued int. $125, app. val.	2,625.00
Note of M. E. Leming Lumber Co. prin. $2,500, accrued int. $125, app. val.	2,625.00

Note of M. E. Leming Lbr. Co. prin. $2,500, accrued int. $125, app. val.	2,625.00
[fol. 42] Note of M. E. Leming Lbr. Co. prin. $1,000, paid $400, bal. $600, app. val.	636.00
Note of M. E. Leming Lbr. Co. prin. $2,000, paid $800, bal. $1,200, accrued int. $72, appraised value	1,272.00
Note of M. E. Leming Lbr. Co. prin. $2,000, paid $400, bal. $1,600, accrued int. $96, appraised value	1,196.00
Note of M. E. Leming Lbr. Co. prin. $1,500 paid $400. Bal. $1,100, accrued int. $66 appraised value	1,166.00
3 notes of B. H. Ramsey for $50, $50 and $25, accrued int. $3, app. val.	125.00
Note of John Dunning, Mr. and Mrs. F. B. Dunning and C. H. Schuehuff, prin. $90, accrued int. $6.60, appraised value	90.00
Note of J. L. Speer for $20, accrued int. $4.47, appraised value	Worthless.
Note of J. L. Speer for $20.75, accrued int. $4.42, appraised value	Worthless.
Total	$101,979.19

(Here appears recital on deduction for recovery on damage suit in Illinois.)

Total amount of estate		$132,656.19
Total amount of debts to be deducted	$1,822.59	
Cost of administration, not including Transfer taxes	9,218.86	
Total deduction	$11,401.45	$11,041.45
Net value of estate		$121,614.74

[fol. 43] Ninth. That the name of each beneficiary, address, relation to deceased, value of property received, exemption, net amount subject to Transfer Tax, rate of taxation, and amount of tax due from each are set forth in the following table:

Thomas A. Baldwin, Quincy, Illinois.
Son. Adult.
Item 2 of Will, sole beneficiary.
Value received, $121,614.74.
Exemption, 20,000.00.
Subject to Tax, 101,614.74.

	Rate	Amount of tax
50,000.00	2%	1,000.00
51,614.74	4%	2,064.59
Total amount of tax due state		$3,064.59

(Service statement, expense statement and certificate of Appraiser, Charles L. Bartlett, of Adams County, Illinois.)

(Order of Judge of County Court approving tax appraisement of Charles L. Bartlett.)

Office of the County Treasurer of Adams County, Illinois

No. —

In the Matter of the Estate of Carrie Pool Baldwin, Deceased

Transfer Tax

Received of Thomas A. Baldwin, sole beneficiary of the Estate of Carrie Pool Baldwin, Deceased, twenty-nine hun- [fol. 44] dred eleven & 37/100 Dollars, being payment in full of Transfer Tax, as follows:

Beneficiary	Appraised value
Thomas A. Baldwin, Adult (son), Sole beneficiary	121,614.74
Exempt	20,000.00
	101,614.74
50,000.00 @ 2%	1,000.00
51,614.74 @ 4%	2,064.59
101,614.74	3,064.59
Less 5% discount	153.22
	$2,911.37

Date of death of deceased: October 4, 1926.

Given in duplicate at Quincy this 24th day of March A. D. 1927.

Charles F. Hildebrand, County Treasurer.

STATE OF ILLINOIS, ss:

Office of State Treasurer

Springfield, Ill., Mar. 29, 1927.

This is to certify that I have this day charged the County Treasurer of Adams County, Illinois, with the amount of the above Transfer tax.

In witness whereof, I have countersigned this certificate and affixed thereto my official seal of the day and year aforesaid.

G. De F Kinney, State Treasurer. (Seal.)

3-29-27.

s.

[fol. 45] STATE OF ILLINOIS,
Adams County, ss:

I, Charles F. Hildebrand County Treasurer in and for the county aforesaid, do hereby certify that the foregoing is a true copy of a receipt given to Thomas A. Baldwin aforesaid, by Charles F. Hildebrand County Treasurer of this County, for Transfer Tax on the above described property, as fully and completely as the same appears on file in my office.

Given under my hand this 24th day of March A. D. 1927.

Charles F. Hildebrand, CountyTreasurer.

STATE OF ILLINOIS,
Adams County, ss:

I, W. J. Smith, Clerk of the County Court of the County and State aforesaid, hereby certify that the foregoing contains a full, true and correct copy of Letters Testamentary issued to Thomas A. Baldwin, Executor of the last Will and Testament of Carrie Pool Baldwin, deceased. Said Letters are still in full force and effect and the said Thomas A. Baldwin is still acting as the Executor of said Estate, and also a full, true and correct copy of the Inventory

which was approved by the Court on the 28th day of January A. D. 1927. And also a full, true and correct copy of the Appraiser's Report, Order Approving Appraiser's Report and Fixing the Tax, and Receipt of the County Treasurer of Adams County, Illinois, in the matter of [fol. 46] the Inheritance tax in the estate of said Carrie Pool Baldwin, deceased, as the same now appears of Record and on files in my office remaining.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Quincy, this Tenth day of June, A. D. 1927.

W. J. Smith, Clerk.

(Certificates of authentication under Acts of Congress duly attached thereto.)

In support of this correct and supplemental abstract respondents tender the original bill of exceptions and original court records in said cause.

Respectfully submitted.

Harry Carstarphen, John F. Garner, Attorneys for Respondents.

Minute entry of argument and submission May 9, 1929, omitted in printing.

[fol. 47] IN SUPREME COURT OF MISSOURI

STATE OF MISSOURI, Appellant,

v.

Estate of CARRIE POOL BALDWIN, Deceased, Respondent

Appeal from the Circuit Court of Lewis County

JUDGMENT—June 29, 1929

Now at this day come again the parties aforesaid, by their respective attorneys, and the Court here being now sufficiently advised of and concerning the premises, doth

consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Circuit Court of Lewis County rendered, be reversed, annulled and for naught held and esteemed, and that the said appellant be restored to all things which it has lost by reason of the said judgment. It is further considered and adjudged by the court that the said cause be remanded to the said Circuit Court of Lewis County for further proceedings to be had therein in conformity with the opinion of this court herein delivered; and that the said appellant recover against the said respondent its costs and charges herein expended and have execution therefor.

(Opinion filed.)

[fol. 48] IN SUPREME COURT OF MISSOURI, EN BANC, APRIL TERM, 1929

No. 28664

STATE OF MISSOURI, Appellant,

v.

CARRIE POOL BALDWIN, Respondent

OPINION

This proceeding was begun in the Probate Court of Lewis county to assess an inheritance tax against property belonging to the estate of Carrie Pool Baldwin, deceased.

Carrie Pool Baldwin did testate in Quincy, Illinois, October 4, 1926. Her will was probated in Illinois. At the time of her death she was a resident of Illinois, as was her son Thomas A. Baldwin, sole devisee and executor of the will.

Letters of administration with will annexed were issued on her estate October 22, 1926, to Harry Carstarphen, of Hannibal, Missouri, and the will admitted to probate in Lewis county, Missouri. The Judge of the Probate Court of Lewis county appointed appraisers to fix the value of decedent's property in Missouri, subject to inheritance tax. The executor, Mr. Baldwin, filed a motion in that court asking the court to order the administrator to turn over

to him all the personal and intangible property in the estate of decedent in Missouri. The motion was overruled.

The appraisers proceeded to appraise the property, made report to Mr. Carstarphen, the Missouri administrator, and Thomas A. Baldwin, executor, filed exceptions to that report. Exceptions were overruled and inheritance tax assessed against certain property belonging to the estate. The administrator appealed from the ruling of the probate [fol. 49] court to the circuit court, where, September 5, 1927, judgment was rendered by that Court setting aside that part of the appraiser's report assessing inheritance tax against the intangible property of the estate, and from that judgment the state appealed to this Court.

The total property listed by the appraiser consisted of certain real estate situated in Lewis county, Missouri, valued at $55,380, and certain personal property amounting to more than eighty-five thousand dollars; a total of $141,278.09. After deductions and exemptions the total estate listed for taxation in Missouri amounted to $121,358.80. Of this the real estate valued as above, was held by the trial court to be properly listed and assessed for inheritance transfer tax, but held that the personal property listed, amounting to more than $65,000, was not subject to taxation.

The personal property which the circuit court held was not taxable included $15,937.51, deposited with the Southeast Missouri Trust Company at Cape Girardeau, Missouri; $1078.24 deposited in Advance Exchange Bank at Advance, Missouri; two Liberty Bonds of one thousand dollars each. The remainder consisted of about thirty promissory notes due the deceased, signed by various parties, all of which, it is stated, were secured by mortgages on real estate in Missouri with the exception of five notes unsecured, three of them for small amounts. There was no evidence as to why these deposits, notes and bonds were in Missouri, nor how they came into the possession of the Missouri administrator. It is not questioned that he was rightfully appointed administrator in this State and lawfully came into possession of the said evidences of debt. The only showing that they were in fact in Missouri was the motion filed by Thomas A. Baldwin, executor, to have the property turned over to him.

[fol. 50] On trial in the circuit court the attorney for the executor introduced in evidence a list of the property consisting of exactly the same cash in bank, bonds and notes, listed by the executor in Missouri, as listed in the state of Illinois, and made subject to inheritance tax in that state.

I. As to the money deposited in the bank, the relation of debtor and creditor exists between the bank and the depositor. The money is in fact the property of the bank, and it owes the amount of its deposit to its depositor. As to the notes, the simple relation of debtor and creditor exists. The Government bonds likewise are debts which the government owes to the bondholder. All these different kinds of property may be considered as of one class for the purposes of this case.

In recent cases we have held for the purpose of property tax that the situs of a credit is the domicile of the creditor, citing Railroad Co. v. Pennsylvania, (15 Wall. 300), where it was held that debts have no locality separate from the parties to whom they are due and to tax them elsewhere might be unconstitutional as impairing the obligation of contract. (State ex. rel. v. Gehner, 8 S. W. (2nd) 1057, l. c. 1060, and cases cited; State ex rel. v. Gehner, 8 S. W. (2nd) 1068).

If we could apply the same rule to an inheritance tax we might have less difficulty in disposing of this case. The inheritance tax statute, Article XXI, Ch. 1, R. S. 1919, provides an entirely independent method of ascertaining the property subject to inheritance tax from that applicable for general tax. The definition of the term "property" in the last section, 589, of that Article, makes inapplicable any definition relating to general property tax. An inheritance tax is not a property tax, but an excise tax, or a tax [fol. 51] upon succession. (In re Zooks Estate, 296 S. W. l. c. 780, and cases cited.)

II. Section 558 R. S. 1919, imposes a transfer or inheritance tax in the following cases:

"When the transfer is by will or by the intestate laws of this state from any person dying possessed of the property while a resident of this state. When the transfer is by will, or intestate law of property within the state or

within the jurisdiction of the state and decedent was a nonresident of the State at the time of his death."

We are concerned only with the second sentence, which applies to nonresidents whose property at the time of death is within the state or within the jurisdiction of the state. There is no difficulty in ascertaining when property is within the state. According to the doctrine mobilia personam sequuntur, which we have held to prevail for purpose of general taxation in cases above cited, it might be said that the property in question here was not within the state although it might be within the jurisdiction of the State. There was no claim at the time the executor filed his motion to have the property transferred to him, that the money in bank and the evidences of debts were in this state only temporarily. The decedent, Carrie Pool Baldwin, had large possessions in this state including the real estate mentioned the only personal property listed upon which an inheritance tax was levied in Illinois was the very property listed here. These notes, bonds and cash were all in the possession of the administrator in Missouri. For what purpose they were in Missouri is not shown. We cannot assume that they were in the State of Missouri for the purpose of escaping taxation in the State of Illinois. It is a reasonable inference that the cash and notes in such large quantities in Missouri, when none of it was held in Illinois, was retained in this state for the purpose of investment. They may have es- [fol. 52] tablished a business situa in this state, in which case it would be subject to a general tax as well as the inheritance tax.

III. Was the property under consideration here within the jurisdiction of the state? The notes were in this state in the custody of the Missouri administrator. The debts were secured by mortgage on Missouri real estate except a few of the notes which with the bonds were also in the custody of the administrator; the money was in banks in Missouri.

Some of the adjudications on the subject are important: In New York, in the Matter of Whiting, (150 N. Y. 27), it was held that money deposited in bank in New York of a resident of Rhode Island, was subject to the tax. The

Court, (l. c. 30), delivered this proposition, construing an act of the legislature:

"Thus the legislature intended as I think, to repeal the maxim mobilia personam sequuntur so far as it was an obstacle and leave it unchanged so far as it was an aid to the imposition of a transfer tax."

The ruling in the Whiting case was affirmed by the Court of Appeals. The principle announced in the quotation would lead to inequitable results and make possible double taxation. New York later amended its statute. And it was held in In Re Colt's Estate, (211 N. Y. Supp. 541, l. c. 543), that money of a nonresident lent to a firm doing business in New York was not subject to a transfer tax in New York.

In the state of Iowa that rule formerly prevailed, but a different rule is announced in later cases. It was held in Chaffin v. Johnson, (200 Iowa 86), that a promissory note executed by a resident of the state, secured by mortgage on Iowa real estate, the note and mortgage belonging to a nonresident, having never been kept in Iowa "is subject to the jurisdiction of the courts of this State," and subject [fol. 53] to the tax. The clause is similar in significance to that in our statute.

In Hoyt v. Keegan, (183 Iowa 502), it was held that a bank deposit in Iowa was subject to collateral inheritance tax, though the pass book and the certificate of deposit were in the actual possession of the decedent at the time of his death in Illinois. The reason was the same in both cases; the creditor was protected in the security of his debt by the courts of the State of Iowa, and he was obliged to resort to those courts in order to secure his debt and enforce its payment. Therefore it was subject to the jurisdiction of the courts of the state.

In State v. Jones, (261 Pac. 356, l. c. 357 and 359), the Supreme Court of Montana held promissory notes secured by mortgage in Montana, although the notes at the time were located in New York, the home of the decedent, were subject to the transfer tax. That was under a statute which subjects to the tax a nonresident's "property in the state or *within its jurisdiction.*" The exact phrase in our statute.

The Supreme Court of Colorado, In Re Waldron's Estate, (267 Pac. 191), construed a statute providing for such a tax on property "within the state." It was held that cash in a safe deposit box and United States bonds, certificates of deposit of a nonresident, was property within the state. The Court considered the proposition that in a bank deposit the relation of debtor and creditor exists between the banker and the depositor, and the situs of the property for some purposes is the domicile of the depositor, but that principle has no force under the inheritance tax law.

The Federal Supreme Court, in Blackstone v. Miller, (188 U. S. 189), had under consideration the right of a state to impose a transfer tax upon bank deposits of the decedent whose domicile was in another state, although it might be so taxed in the state of the domicile. The Court, [fol. 54] (l. c. 203), notes that the property when found was not in transitu, in such sense as to withdraw it from the power of the state; it was delayed within the jurisdiction of New York an indefinite time.

In Kinney v. Treasure, (207 Mass. 368), it was held that promissory notes secured by mortgages on real estate in that state belonging to a nonresident decedent were subject to transfer tax. The court mentioned the rule in Massachusetts that the mortgagee holds the title to the property until it is redeemed (l. c. 370), but also called attention to a similar rulings in states where it was held that a mortgage is only a lien on the real estate.

Blackmoor and Bancroft on Inheritance Tax, (pp. 157-158), cites cases where a distinction is made between the property of a nonresident placed in the hands of an agent within the state for management and control, and where that condition does not apply, and Section 219, (p. 180), in regard to mortgage liens, states the rule that

"The succession may be taxable either at the home of the mortgagee or in the jurisdiction where the land lies, although the note and mortgage are actually in possession of the mortgagee at his domicile."

The late cases cited above are samples of the prevailing doctrine in other states. But there are cases where it is held that a transfer tax cannot be imposed on promissory notes and other debts of a nonresident. Chambers v. Mum-

ford, (187 Calif. 228) was such a case where it was held that a note executed by a resident, payable to a nonresident, was not subject to a transfer tax. The court calls attention to the statute under which that ruling was reached, (l. c. 232), which permitted such taxation upon property "*within this state,*" and held the maxim "*mobilia personam sequuntur*" applied.

[fol. 55] The same ruling in Pennsylvania, In Re Helena, (236 Pa. 213; 46 L. N. S. 1167, et seq.). It was held that the personal property of a nonresident in the hands of trustees in that state maintains a situs at the decedent's domicile and is not subject to collateral inheritance tax, because it was not "*situated within this state.*" Copious notes in 46 L. N. S. at the pages cited considers cases from many jurisdictions. Attention is called to a tendency to adopt legislative action so as to prevent double taxation in such cases. Some states have enacted statutes which would prevent an inheritance tax upon property so taxed in another state.

The rule in Michigan is that a debt secured by mortgage in that, state, payable to a nonresident, is subject to the inheritance tax. Bradley v. Merriam Estate, (9 N. L. N. S. 1104), and in that case the notes and mortgages were in the possession of the decedent at the time of his death.

We find no authority denying the right to impose the tax under a statute containing a clause similar to our "within the jurisdiction or the state," where the evidence of the debt and the debtor are in the State imposing it, and the creditor is a nonresident. In this case the notes secured by mortgages were on land in this state, an asset in the estate of the decedent, protected by the laws of this state. The creditor or his devisee or legatee must have recourse to the courts and laws of this state to protect his rights in a debt to secure its payment. That is equally true of the money in bank. That is likewise true of the bonds and the unsecured notes which were physically present in the state where the debtor resides. All this property was inventoried by the administrator in Missouri. It was properly and lawfully in his custody, which indicates that it was not in transitu nor temporarily within the state. All [fol. 56] of it was properly within the jurisdiction of a probate court in this state, and therefore "within the juris-

diction of the state" in the terms of the statute. Such evidences of debt could not remain in this state without being in the custody of some person or corporation who had authority over it as an agent of the owner, otherwise it would not have been here so as to be accessible to the administrator. It possibly acquired a business situs in this state. Whether it did or not it was within the jurisdiction of the state and property subject to the transfer tax. It would have been a proper subject of inquiry by the trial court to determine how and why and under what conditions these evidences of debt were in this state, but whatever the determination of that question the property was legally within the jurisdiction of the probate court of Lewis county in this state and subject to the tax.

That Illinois taxed it does not affect the right of Missouri to tax it, as shown in several of the cases cited. That such double taxation is inequitable and should be remedied by statute does not affect the legal right to impose the tax. We are obliged to declare the law as the lawmakers have enacted it.

Two principal cases in this state are cited. In Re Zooks Estate, (296 S. W. 778), and Richardson v. Busch, (198 Mo. 174). In both those case- this Court had under consideration the inheritance tax applied to certificates of stock in a foreign corporation. Stock and certificates of stock are quite different from evidences of debt such as bonds and notes, although the reasoning in the Zooks case would apply here.

The judgment is reversed and the cause remanded with directions to the trial court to proceed in accordance with this opinion.

Frank, Blair & Garth, J. J., concur; Walker, J., concurs in separate opinion; Atwood, J., not sitting; Ragland, J., dissents.

J. T. White, Chief Justice.

[fol. 57] IN SUPREME COURT OF MISSOURI, April Term, 1929, EN BANC

[Title omitted]

CONCURRING OPINION

WALKER J., concurring:

I concur in the result reached in the leading opinon but deem it not inappropriate to state the facts as I read the record, and my reasoning and conclusion as to why the judgment of the circuit court should be reversed and remanded.

This is a suit to subject to the payment of an inheritance tax certain intangible personal property belonging to the estate of Carrie Pool Baldwin, who died testate at her home in Qunicy, Adams County, Illinois, October 4, 1926. Her son and sole legatee, Thomas A. Baldwin, was, under the terms of her will, the executor of her estate. Ancillary letters of administration with the will annexed, upon her property in this state, were issued in Lewis County, Missouri, to Harry Carstarphen on the 22nd day of October, 1926. Her estate consisted of real and personal property in the states of Illinois and Missouri. Aside from her real property in Missouri, not involved in this controversy, her personal property therein consisted of cash, United States Government bonds and promissory notes of individuals and corporations, of the aggregate face value of $58,898.09. This property had been deposited by her at various times in lock boxes and safe deposit vaults in different banks in this state.

The notice required by Section 568, R. S. 1919, of the inheritance tax law, in regard to property in this state belonging to a non-resident decedent owner, was given to the State Treasurer. On December 16, 1926, the Probate Court [fol. 58] of Lewis County, Missouri appointed an appraiser to appraise the property above mentioned belonging to the non-resident decedent, Carrie Pool Baldwin, for the purpose of determining the amount of the inheritance tax due thereon. This appraisement was made and upon the report of the same being filed in the probate court that court approved the report and assessed an inheritance tax upon all

of the property of the non-resident decedent listed in said report as located in this state. Upon the filing of said report the domiciliary and the ancillary administrators filed in said court exceptions to the report of the appraiser, contending that the intangible personal property of the non-resident decedent located in this state, to-wit; the cash, bonds, notes, etc., was not taxable in this state on account of the nature of said property and the non-residence of the testator. The court overruled these exceptions and the administrators appealed to the Circuit Court of Lewis County, Missouri. Upon the case being heard in that court on the exceptions filed in the probate court, the ruling of the probate court was reversed and it was held that all that portion of the appraiser's report which appraised the intangible personal property of the non-resident decedent was void. An appeal from said judgment was thereupon perfected to this court.

The section of the Missouri Inheritance Tax Law, (Sec. 558, R. S. 1919), so far as the same has reference to the matter at issue, is in effect as follows: "A tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed, or any interest therein, or income therefrom, in trust or otherwise, to persons, institutions, associations or corporations * * * when the transfer is by will, or intestate law of property within the state, or within the jurisdiction of the state and the decedent was a non-resident of the state at the time of his death. When the transfer is made by a resident or by a non-resident when such non-resident's property is within this state, or within its jurisdiction, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor, or donor or intending to take effect in possession or enjoyment at or after such death."

I. The intangible character of the personality involved in this controversy is conceded by the respondent. The ques-[fol. 59] tion demanding solution is the liability of this property to taxation under the inheritance law of this state. The theory adopted here and elsewhere, as a basis for the imposing of what is designated as a tax of this character, is that it is an excise or import levied on the transfer of the property from dead hands to living ones, (Knowlton v. Moore, 178 U. S., 41, 44 Law Ed., 969; Scholey

v. Rew, 23 Wall. 331, 123 Law Ed., 99; Est. of Zook-Hibbard v. Thompson, 317 Mo., l. c. 995, 296 S. W., 778).

Although the value of the property is used to determine the amount of the tax, this is the only respect in which it bears a resemblance to property taxation. It may well be said, therefore, that it is not a tax on property, but upon the right of its transmission or succession, (McClintock v. Guinotte, 275 Mo., 298; Est. of Remme-McGuire v. University, 271 Mo., 359; State ex rel. Fath v. Henderson, 160 Mo., l. c. 215). Probably the best definition of the same, and the one adopted by many authorities, is that it is a charge on the privilege of succession or the right of the heir, devisee or legatee to receive rather than the right of an ancestor or donor to give, or, through the instrumentality of the law, to transmit his property, State ex rel. Garth v. Switzler, 143 Mo., 328; State ex rel. v. Mann 76 Wisc., 478; Gelsthorpe v. Turnell, 20 Mont., 299, 39 L. R. A., 170; Lacy v. State Treas., 121 N. W. (Ia) 179).

II. The comprehensive language of Sec. 558, R. S. 1919, is such as to include within the power of the state any property, real, personal or mixed, or any interest therein or income therefrom, in trust or otherwise, when the property is within the state or within its jurisdiction at the time of the death of the owner, whether the latter was at the time a resident or a non-resident of the state.

The provision of the statute being ample to authorize the imposition of this tax, it remains to be determined whether from the nature of the property or from constitutional or other considerations, the statute may be held to apply in cases as at bar.

It may be stated generally that all property, tangible or intangible, no matter where located and whether it has ever [fol. 60] been within the state or not is subject to an inheritance tax in the state of the domicile of the decedent. We so held in In re Est. Zook-Hibbard v. Thompson, (317 Mo., 986, 296 S. W., 778 and cases cited). We are not concerned here with the reasons for such ruling, other than to say that the theory upon which the imposition of the tax was upheld was under the maxim, mobilia sequuntur personam. Whether the application of this maxim is founded in reason as to property actually located other than at the

domicile of the owner, might, if the facts warranted, be entitled to serious consideration. We say this incidentally, because a review of the cases leads to the conclusion that the application of this maxim that moveables follow the person, has been, in many instances, cut down until its field has not only become very narrow, if it may be said to still exist. It will be enough to say that the history of the origin of this maxim is stated in an interesting manner in Wharton's Conflict of Laws (3rd ed.), Sec. 297, in which it is shown that the origin and application of the maxim was under conditions entirely different from those existing at the present time.

III. The facts at bar present a case the converse of those in In re Zook's Estate, supra. In the latter the question submitted was the authority of this state to levy an inheritance tax on intangible property on deposit in banks in another state than that of the decedent owner, who resided at the time of his death in this state. In the instant case it is sought to impose the tax on intangible property located in this state, the decedent owner of which had her domicile in another state at the time of her death.

The validity, therefore, under the Constitutions, State and Federal, of the statute authorizing the imposition of an inheritance tax under the facts in the case at bar, is of moment in the determination of this case.

In Blackstone v. Miller, 188 U. S., 189, 47 Law ed., 439, the constitutional power of a state by virtue of the citizenship and residence of the debtor to exact an inheritance tax in respect of a debt due from a resident of the state to the estate of a non-resident, was affirmatively declared. The [fol. 61] indebtedness in that case consisted of bank deposits which were regarded as money for all practical purposes owned by a non-resident decedent at the time of his death and as such taxable under the inheritance or transfer law of the state. In rendering this decision the United States Supreme Court did not rest its ruling upon any distinctions between the technical indebtedness represented by a bank deposit and other forms of indebtedness, but it was expressly put upon the broader ground that the transfer of the indebtedness depends upon the law of the residence of the debtor, not because of any theoretical speculation

concerning the whereabouts of the debt, but because of the practical fact of its power over the person of the debtor; the same principle, the court observed, that has been recognized with regard to the garnishment of a domestic debtor or an absent defendant—citing Chicago, R. I. & P. R. Co. v. Sturm, 174 U. S., 710, 43 L. Ed, 1144, 19 Sup. Ct. Rep., 797.

In State ex rel. Graf v. Probate Court, 128 Minn., 371, L. R. A., 1916A, 901, the devolution of debts owed to non-residents, whether evidenced by promissory notes or not, were subject to a succession tax. The debts consisted of promissory notes and book accounts, the debtor being a domestic corporation. The Minnesota statute imposed a tax when a transfer was by will or the intestate law of property within the state or within its jurisdiction and the decedent was a non-resident of the state at the time of his death. The court's holding was to the effect that the property might be subjected to the payment of a succession tax by the state in whose jurisdiction it was found.

In Chaffin v. Johnson, 200 Iowa, 86, 204 N. W., 424, the court quotes from Blackstone v. Miller, supra, to the effect that it is the Law of the place where the debtor is that renders the evidences of the debt liable to the payment of a succession tax; and in reply to the contention that a distinction exists between a bank deposit and other debts it was held as applied to the statute, that the distinction was without substance and that the deposit of funds in a bank and the taking of a negotiable certificate therefor created the relation of debtor and creditor.

[fol. 62] In State ex rel. Collector v. Bunce, 187 Mo. App., 607, 173 S. W., 101, a note belonging to the estate of a non-resident, the maker of which resided in Missouri, (the adminstration of whose estate was had in this state), was held to be within this jurisdiction and liable to an inheritance or succession tax. The facts in regard to that case are that the note was brought to Missouri by the owner of the same when he came here a short time before his death. The decision of this court was, however, not predicated on that fact but upon the fact that the debtor was a resident of this state and that administration was had thereon within this jurisdiction.

In Re Gibbes, 84 App. Div., 510, 83 N. Y. Supp., 53, affirmed without opinion in 176 N. Y., 565, 68 N. E., 1117,

the court observed that the decisions that money left on deposit by a non-resident within New York is taxable (Re Houdayer, 150 N. Y., 37, 34 L. R. A., 235, 55 Am. St. Rep., 642, 44 N. E., 718; Re Blackstone, 69 App. Div., 127, 74 N. Y. Supp., 508, affirmed in 171 N. Y. 682, 64 N. E., 1118, which is affirmed in Blackstone v. Miller, 188 U. S., 189, 47 L. Ed., 439, 23 Sup. Ct. Rep., 277), go upon the theory that money upon deposit in a bank is the same, in effect, as if the testator had placed the money in a deposit vault, and that, therefore, it is property left by him within the state. It may be observed, however, that the argument, at least, of the United States Supreme Court in the Blackstone Case, affirms the power of the state of the debtor's domicile to exact the tax, even in respect of ordinary debts.

Although the items belonging to the estate of the non-resident which were held subject to the tax in Re Daly, 100 App., Div., 373, 91, N. Y. Supp., 858, (affirmed without opinion in 182 N. Y., 524, 74 N. E., 1116), were treated as bank deposits and so equivalent to cash, the majority of the court was of the opinion that they would be subject to the tax even if treated as debts in the ordinary sense, citing in support of this view the opinion in the United States Supreme Court in Blackstone v. Miller, (U. S.), supra.

IV. Many of the objections here made to the constitutionality of the statute under review were ruled upon ad- [fol. 63] versely to the objectors by this court in McClintock v. Guinotte, 275 Mo., 298. In that case it was held that the statute was not in violation of the following constitutional provisions: Sec. 30 of Art. 2, that no person shall be deprived of property without due process of law; Sec. 28 of Art. 4, that no bill shall contain more than one subject which shall be clearly expressed in its title; Sec. 43 of Art. 4, that money received by the state shall be paid into the state treasury and not permitted to be diverted or drawn therefrom, except under lawful appropriations therefor; Sub-Sec. 16 of Sec. 53 of Art. 4, prohibiting the passage of local or special laws of descent or succession; Sub-Sec. 21 of Sec. 53, of Art. 4, prohibiting the passage of local or special laws affecting the estates of minors; Sec. 3, of Art. 10 that taxes must be levied and collected for public purposes and must be uniform upon the same class of subjects.

V. The strong trend of authority in the courts of last resort in the different states is in harmony with the ruling in the Blackstone case, supra, to the effect that inheritance taxes not being taxes on property but on the privilege of the transmission or succession of the same, a state may measure such taxes by the value of the property, although it may not tax the same directly.

It is a misconception of the rulings of the Supreme Court of the United States to contend that cases subsequent to the Blackstone case overrule the latter. In an interesting and exhaustive review of these cases (relied upon by the respondent) by Mr. Harry W. Kroeger in Vol. XIV, p. 99, St. Louis Law Review, it is clearly shown that they do not overrule the doctrine of the Blackstone case. It will be found upon an analysis of the cases referred to in the respondent's brief that the facts involved therein were different from those in [illegible] case; and that whatever may have been said in criticism [illegible] the latter was in passing, and was not decisive of the issues therein submitted.

VI. The ruling in the Zook case, supra, by our own Supreme Court, that intangible property located in another state and owned by one who at the time of his demise was a resident of this state, was taxable at the domicile of the [fol. 64] owner does not militate against the correctness of the conclusion that the privilege of taxing the transfer or inheritance of such property could only be levied at such domicile. Although subject to the tax in Missouri it might also be liable to a similar tax in the state where it was located. This conclusion is but the converse of the rule established by several authorities that the power of the domiciliary state to exact a tax on the transmission of intangible is not defeated by the imposition of a like tax by another state, (In Re Hodges, 176 Calif., 492, L. R. A., 1916-A, 837; Roark v. Matthews, 125 Ark., 378, 188 S. W., 841).

Our statute is sufficiently broad to authorize the exaction of an inheritance tax in respect of all property within the jurisdiction of the state regardless of the domicile of the owner. Under a statute not dissimilar in its material features from that at bar, the case of Re Hoffman, 70 N. J. Eq., 664, 62 Atl., 560, gives a comprehensive review of the power of a domiciliary state to exact an inheritance tax in respect of all personal property regardless of its location

and its subjection to the taxing power of other states. In that case it was held that the entire personal estate of a decedent domiciled in New Jersey was subject to the tax, although a tax of precisely the same character and amount had been levied and collected in New York where the personal property was located, and this notwithstanding that the New York tax had been legally imposed. The New Jersey court observed that the unfortunate situation resulting from the required payment of the two taxes of like character by the same legatees for the right of succession to the property could not control the determination of the question, for such a condition frequently arises and while its presence always induces careful consideration on the part of the court to find some legal method to prevent it, it must be submitted to unless it can be avoided under settled rules relating to the subject.

In Re Sandford, 188 Iowa, 833, 175 N. W., 506, in reply to the contention that personal property in Nebraska could be taken into consideration in fixing the tax at the domicile [fol. 65] of the owner in Iowa for the reason that a similar tax would be imposed and collected in Nebraska resulting in double taxation, the court said that whatever real merit may be claimed for that position the courts uniformly hold that the tax may be imposed by the state in which the property has its situs and also in the domiciliary state. "Each jurisdiction," said the court, "exercises its own separate and independent power of taxation and there is no conflict."

In Nuckolls v. Comm., 127 Va., 640, 105 S. E., 230, the court held that the fact that two states, each dealing with its own laws have taxed the rights of succession their laws respectively confer, affords no reason for complaint on constitutional grounds. This conclusion was occasioned by the overruling of an objection to the exaction of a tax in respect of shares of stock in a national bank located in Missouri, which stock was owned by a decedent domiciled in Virginia and which stock had been subjected to a similar tax in Missouri. This opinion is replete with learning on this subject.

VII. Further concerning the contention as to the invalidity of the inheritance tax statute on the ground that it is in violation of the Fourteenth Amendment of the Federal

Constitution, while not specifically referred to in the case of McClintock v. Guinotte, 275 Mo., 298, a like clause in Sec. 30, Art. 2 of the State Constitution to that in the Fourteenth Amendment having particular reference to the right to due process of the law, was construed, and it was held that the inheritance statute did not deny this right. A like conclusion is, under the most elementary rule of construction, applicable in determining whether the statute contravenes the Fourteenth Amendment. That it does not is attested by numerous cases construing like statutes, (Keeney v. N. Y., 222 U. S., 525, 56 Law ed., 299, 38 L. R. A., n. s., 1139 and cases; Nat'l Safe Deposit Co., 232 U. S., 58 Law ed., 504, Ann. Cas., 1912-B, 430; Minot v. Stevens, 207 Mass., 588, 33 L. R. A., n. s., 236).

The case of Frick v. Pennsylvania, 268 U. S., 473, is by no means a denial of the right of the state where the property is located to impose an inheritance tax with respect to [fol. 66] intangible personality. That case has reference to the denial of the constitutional power of a domiciliary state to tax tangible personal property physically located in another state than that of the decedent and not to intangibles.

The discussion of the power to tax by Chief Justice Marshall, in McCullough v. Maryland, (4 Wheaton, 316), has reference to property taxation as is evident from its context and not to a tax laid upon a privilege or a right to receive property by an heir or legatee.

A clear line of demarcation is made in the Frick case between the rules governing the taxation, under inheritance or succession laws, of tangible and intangible personalty. The following paragraphs from the opinion in that case will demonstrate the correctness of that interpretation:

"Counsel for the state cite and rely on Blackstone v. Miller, 188 U. S., 189, 47 Law ed., 439, 23 Sup. Ct. Rep., 277, and Bullen v. Wisconsin, 240 U. S., 625, 60 L. ed., 830, 36 Sup. Ct. Rep. 473. Both of the cases relate to intangible personalty, which has been regarded as on a different footing from tangible personalty. When they are read with this distinction in mind, and also in connection with other cases before cited, it is apparent that they do not support the tax in question."

So far as relevant to the matter at issue Blodgett v. Silberman, (277 U. S. 1, 48 Law ed., 410), simply holds that intangible personalty has such a situs at the domicile of the owner that its transfer upon his death may be taxed there. There is no ground for controversey in regard to this ruling militating against the power of a state where the property is located other than that of the domicile of the decedent to also impose an inheritance tax on such property. The legal propriety of such a course hase been demonstrated. Chief Justice Taft, who wrote the opinion in the Blodgett-Silberman case, expressly states that as to the right of the state of the situs to also impose an inheritance tax on intangible personalty is not a matter of inquiry in the Blodgett-Silberman case.

The question involved in State ex rel. Auto. Ins. Co. v. [fol. 67] Gehner, 8 S. W., (2nd), 1057, was in reference wholly to property and not to inheritance taxation. When the court says in that case that "bonds, mortgages and debts generally have no situs independent of the domicile of the owner" the reasonable interpretation of this declaration is that in limiting the situs, the court had reference to its purpose in the imposition of ad valorem or property taxes. No other question was in issue. A like rule of construction may be applied to a similar statement in State ex rel. Hickman v. Lewis, 256 Mo., 98, 165 S. W., 319.

For the reasons stated, so much of the judgment of the circuit court in this case is reversed which holds that the intangible personalty in this state belonging to the estate of Carrie Pool Baldwin is not subject to the payment of an inheritance tax; and the court is directed to enter up a judgment in conformity with this opinion.

R. F. Walker, Judge.

[fol. 68] In the Supreme Court of Missouri, en banc

[Title omitted]

Motion for Rehearing—filed July 9, 1929.

Now come respondents herein and move the court to set aside its opinion and decision heretofore filed in this case

[fol. 69] and grant respondents a rehearing for the following reasons:

Because the court has overlooked and not ruled upon a question decisive of the case which was duly submitted by counsel, to-wit: The constitutional question involved in construing the statutes on inheritance tax (Sec. 558, R. S. 1919). The constitutional provisions (set out in the brief herein of counsel for respondents) which the statute violates, when construed to embrace the evidences of debt, are:

First. Article II, Section 30, Constitution of Missouri.

Second. The Fourteenth Amendment to the Federal Constitution. The first is a guaranty written by the sovereign people of this State into their constitution that only by "due process of law" may property be taken. The second is the guarantee written into the Federal Constitution calculated to strengthen the bonds of union of the various States and enjoining . . e action of Missouri (as well as other States) against taking property from Carrie Pool Baldwin's estate without due process of law.

Third. Also Section 2, Article 4, of the Constitution of the United States and the Fourteenth Amendment thereof protect the privileges and immunities to citizens of the several states and afford equal protection of the law.

These points are first registered by exceptions filed in the [fols. 70-74] probate court herein and preserved in the record throughout to this court.

The opinion herein wholly overlooks and omits consideration of this the towering and over-shadowing point made by respondents and presented and pressed in the brief in manner and form as best counsel may.

The case of Frick vs. Pennsylvania, 268 U. S. 473; 45 S. Ct. 603, distinctly holds that it violates due process of law for two States to tax the passing of the same property.

Due process of law is in this State construed to mean the law of the land or settled course of judicial proceeding as set out under this point in respondents' heretofore submitted brief.

II

Because the decision is in conflict with an express statute (constitutional provisions) to-wit: Constitution of the

State of Missouri, Article II, Section 30; Constitution of United States, Article IV, Section 2, and Fourteenth Amendment.

For the above reasons respondents respectfully asks that the decision herein be set aside and a rehearing granted respondents.

Harry Carstarphen, John F. Garner, Attorneys for Respondents.

[fols. 75-81½] In Supreme Court of Missouri

[Title omitted]

Order Denying Rehearing—Aug. 2, 1929

Now at this day, the court having seen and fully considered respondent's motion for a rehearing, doth order that said motion be, and the same is hereby overruled.

[fols. 82 & 83] Bond on writ of error for $7,000 approved; omitted in printing.

[fol. 84] In Supreme Court of Missouri

[Title omitted]

Præcipe Indicating the Portions of the Record to be Incorporated Into the Transcript

Acknowledgment of service of a copy of this Præcipe on the defendant in error, the State of Missouri, made this 23 day of Aug., 1929.

Stratton Shartel, by W. E. Sloat, Attorney General.

[fol. 85] Præcipe for Transcript of Record—Filed Aug. 23, 1929

To the Clerk of the Supreme Court of the State of Missouri:

The Clerk will place in the Record:

First. Record Entry of Judgment of the Circuit Court and Order granting appeal.

Second. Appellants abstract of record: pages 1 to 12 inclusive, 13 to 15 inclusive, and the first two lines of 16; then omit the balance of 16 to "Deductions" on page 24; Clerk will then copy beginning with "Deductions" on page 24 to including page 26; then omit the first three paragraphs on page 27 and copy the balance of the Appraiser's Report found on pages 27 and 28; omit the balance of pages 28 to 36 inclusive; copy Motion on pages 37 and 38, also the Will on 38 and 39; omit the balance of 39; insert the suggestion made concerning the real estate on page 40; omit Order appointing Appraiser on pages 40 to 53; copy the Judgment on pages 53 to 57 inclusive, unless it is set out elsewhere, and then refer to the page whereon it is to be found; copy the balance of 57 to 61 inclusive.

Third. Respondent's abstract of record: Record entries on pages 2-3-4, and all of the "Exhibit A" from pages 4 to 17 inclusive.

Fourth. Final submission of cause in the Supreme Court of Missouri.

Fifth. Final judgment and opinions in the Supreme Court of Missouri.

Sixth. Motion for rehearing and order overruling same.

Seventh. Petition for writ of error, assignment of errors and prayer reversal.

Eighth. Clerk's certificate.

Respectfully, John F. Garner, Attorney for Plaintiffs in Error. Harry Carstarphen, of Counsel.

[File endorsement omitted.]

[fols. 86 & 87] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 88] IN SUPREME COURT OF MISSOURI

[Title omitted]

Petition for Appeal, Assignment of Errors, and Prayer for Reversal—Filed Sept. 21, 1929

The undersigned, Stratton Shartel, Attorney General of the State of Missouri, and attorney of record in the above

entitled cause for the appellee herein, State of Missouri, hereby acknowledges for the State of Missouri service of notice of appeal filed in the office of the Clerk of the Supreme Court of the State of Missouri, and acknowledges receipt of citation issued by the Chief Justice of the Supreme Court of the State of Missouri upon allowing appeal, and acknowledges receipt of a copy of application for appeal, assignment of errors and prayer for reversal; order allowing appeal; and citation by the court to this appellee. Such service made and such copies received this 21st day of September, 1929.

Stratton Shartel, Attorney General of State of Missouri, by M. Zeitz.

[fol. 89] PETITION FOR APPEAL

Considering themselves aggrieved by the final decision of the Supreme Court of the State of Missouri in the above entitled cause, the respondents therein, Thomas A. Baldwin; Thomas A. Baldwin, Executor of the will of Carrie Pool Baldwin, and Harry Carstarphen, Administrator of the estate of Carrie Pool Baldwin with will annexed, hereby pray that an appeal be allowed to the Supreme Court of the United States.

[fol. 90] ASSIGNMENT OF ERRORS

And the said Thomas A. Baldwin; Thomas A. Baldwin, Executor of the will of Carrie Pool Baldwin, and Harry Carstarphen, administrator of the estate of Carrie Pool Baldwin with will annexed, assign the following errors in the record and proceedings in said case:

(1) The Supreme Court of Missouri erred in sustaining the validity of Section 558, Revised Statutes of Missouri, 1919, because said statute seeks to impose inheritance tax upon intangible personal property of a non-resident decedent repugnant to the Fourteenth Amendment of the Constitution of the United States, to-wit: (a) Deprives of property without due process of law; (b) denies equal protection of the law; (c) effort of one state to abridge the privileges and immunities of citizens of the United States.

(2) The Supreme Court of Missouri erred in sustaining the validity of Section 558, Revised Statutes of Missouri,

1919, because the decisions of this court (Supreme Court of the United States) announce the law thus: that under the Constitution of the United States it is a violation of due process of law for two states, or all of the states, of the United States to tax the transfer or inheritance of the same property. The inheritance tax may not be exacted by but one state.

(3) The Supreme Court of Missouri erred in sustaining the inheritance tax or transfer tax and imposing such tax upon intangible personal property owned by a non-resident decedent which passes by will to her son a non-resident. Property passes but once and in but one state which is, in the case of intangible personalty, the state of the domicile of the decedent.

(4) The Supreme Court of the State of Missouri erred in sustaining the validity of Section 558, Revised Statutes of Missouri, 1919, because said statute seeks to impose inheritance tax on intangible personal property of a non-resident decedent repugnant to Section 2, Article 4, of the Constitution of the United States, in that Section 558 is in violation of the guarantee to the citizens of each state all privileges and immunities of citizens in the several states.

[fol. 91] PRAYER FOR REVERSAL

For and due to which errors the appellants, Thomas A. Baldwin; Thomas A. Baldwin, Executor of the will of Carrie Pool Baldwin, and Harry Carstarphen, Administrator of the estate of Carrie Pool Baldwin with will annexed, pray that said judgment of the Supreme Court of the State of Missouri in the above entitled cause, rendered on date of June 29th, 1929, and whereon motion for rehearing was overruled on date of August 2nd, 1929, be reversed and a judgment rendered in favor of said appellants herein and for costs.

John F. Garner, Counsel for Appellants. Harry Carstarphen, of Counsel.

[File endorsement omitted.]

[fol. 92] IN SUPREME COURT OF MISSOURI

[Title omitted]

ORDER ALLOWING APPEAL—Filed Sept. 21, 1929

The appellants in the above entitled cause having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled cause by the Supreme Court of the State of Missouri on the 29th day of June, 1929, (motion for rehearing overruled August 2nd, 1929), and from each and every part thereof, and having presented and filed their petition for appeal, assignment of errors and prayer for reversal, pursuant to the statutes and the rules of the Supreme Court of the United States in such cases made and provided:

It is now here ordered that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the Supreme Court of the State of Missouri in the above entitled cause, as provided by law, and it is further ordered that the clerk of the Supreme Court of the State of Missouri shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said Court within thirty days of this date.

And it is further ordered, bond herein having been given and approved in the sum of Seven Thousand Dollars ($7,000.00) in writ of error in this cause, that such bond suffice for the appeal.

Dated this 21st day of September, 1929.

J. T. White, Chief Justice of the Supreme Court of the State of Missouri.

[fols. 93 & 94] Citation, in usual form, showing service on Stratton Shartel, filed September 21, 1929, omitted in printing.

[fol. 95] In Supreme Court of the United States

Statement of the Points to be Relied Upon and Designation of Parts of Record to be Printed—Filed Sept. 24, 1929

Acknowledgment of service of a copy of this Statement of the Points to be Relied upon and Designation of Parts of Record to be Printed on the defendant in error, the State of Missouri, made this 7th day of September, 1929.

Stralton Shartel, Attorney General, by W. E. Sloat, Spec. Asst. Atty. Gen'l.

[fol. 96] Statement of the Points to be Relied Upon and Designation of Parts of Record to be Printed

Comes now the plaintiffs in error in the above entitled cause and state that the points upon which they intend to rely in this case are as follows:

Point 1. That the Supreme Court of Missouri erred in finding and holding Section 558, Revised Statutes of Missouri 1919, valid and not repugnant to the due process of law clause of the Fourteenth Amendment of the Constitution of the United States, because said section imposes inheritance or transfer tax upon intangible personal property of a non-resident decendent which has been taxed at the state of the domicile.

Point 2. That the Supreme Court of Missouri erred in finding and holding Section 558, Revised Statutes of Missouri 1919, valid, because said section denies equal protection of the law and abridges the privileges or immunities of the citizens of the United States in violation of the Fourteenth Amendment of the Constitution of the United States.

Point 3. That the Supreme Court of Missouri erred in finding and holding that the intangible personal property passing from a non-resident decedent to a non-resident is taxable, because the intangible personal property passed but once, which is at the situs of the intangible personal property, i. e., the state of the domicile of decendent. There was no evidence at the trial and there is no evidence whatsoever in this record from which a business agency in Mis-

souri may be found or even contended. The State of Missouri appealed from the trial court.

[fol. 97] Point 4. That the Supreme Court of Missouri erred in finding and holding Section 558, Revised Statutes of Missouri 1919, valid, because said section imposes inheritance or transfer tax upon intangible personal property of a non-resident decedent in violation of Section 2, Article 4 of the Constitution of the United States, guaranteeing to the citizens of each state all privileges and immunities of citizens in the several states.

And the plaintiffs in error further state that only the following parts of the record as filed in this court need be printed by the clerk for the hearing of the case:

The entire record as filed in this court except the printed argument on motion for rehearing found on pages 71, 72, 73 and 74, thereof.

(Signed) John F. Garner, Counsel for Plaintiffs in Error. Harry Carstarphen, of Counsel.

[fol. 98] [File endorsement omitted.]

[fol. 99] IN SUPREME COURT OF THE UNITED STATES

ADDITIONAL DESIGNATION OF PARTS OF RECORD TO BE PRINTED —Filed Oct. 1, 1929

Acknowledgment of service of a copy of this Additional Designation of Parts of Record to be Printed, on the appellee, State of Missouri, made this — day of September, 1929.

—— ——, Attorney General, for Appellee, State of Missouri.

[fol. 100] Additional Designation of Parts of Record to be Printed

Come now the appellants in the above entitled cause and state that the clerk will in making up the record print therein appellants' petition for appeal, assignment of errors and prayer for reversal, order allowing appeal, citation under appeal and acknowledgment of service of appeal

by appellee, and omit those instruments pertaining strictly to writ of error and not a part of the procedure of proper appeal, to-wit: petition for writ of error, assignments and prayer for reversal, pages 76 to 78; order allowing writ of error and citation, pages 79 and 81.

John F. Garner, Counsel for Appellants. Harry Castarphen, of Counsel.

[fol. 101] [File endorsement omitted.]

Endorsed on cover: File No. 34,548. Missouri Supreme Court. Term No. 417. Thomas A. Baldwin, *Thomas A. Baldwin*, executor of the will of Carrie Pool Baldwin, et al., etc., plaintiffs in error and appellants, vs. State of Missouri. Filed September 24, 1929. File No. 34,548.